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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from	
AMERITECH CORPORATION, Transferor	CC Docket No. 98-141
to	
SBC COMMUNICATIONS INC., Transferee	

MOTION OF ICG COMMUNICATIONS FOR LEAVE TO FILE ONE DAY LATE

ICG Communications, Inc. hereby requests leave to file its comments on the proposed merger conditions in this proceeding one day late. The preparation of ICG's comments, due yesterday, July 19, 1999, was completed on the due date and the comments were to be filed electronically. However, the documents consulted by the undersigned counsel regarding the electronic filing procedures were not current. As a result, counsel did not discover until about 10:00 p.m. on the 19th, when the first attempt to file electronically was made, that the internet browser used by counsel's law firm was not a recent enough version to make use of the FCC's electronic filing protocol. Counsel was unable to locate and use an alternative internet browser to file the comments electronically prior to the FCC's midnight deadline.

Therefore, ICG's comments are being filed today, July 20. Because ICG's comments will be sent by overnight mail for delivery on July 21 to counsel for SBC and Ameritech, and hand-served to the companies' local offices today, there can be no prejudice from this brief delay in filing at the FCC.

For the foregoing reasons, ICG's motion for leave to file one day late should be granted.

Dated: July 20, 1999

Respectfully submitted,

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COMMENTS OF ICG COMMUNICATIONS ON PROPOSED MERGER CONDITIONS

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July 19, 1999

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COMMENTS OF ICG COMMUNICATIONS ON PROPOSED MERGER CONDITIONS

Pursuant to the Bureau's Public Notice, DA 99-1305, released July 1, 1999, ICG Communications, Inc. submits the following comments on the proposed conditions for approval of the transfer of licenses from Ameritech Corporation to SBC Communications, Inc.

INTRODUCTION AND STATEMENT OF INTEREST

ICG is a leading national competitive local exchange carrier ("CLEC") and one of the largest "facilities-based" CLECs that is not affiliated with a major interexchange carrier ("IXC"). ICG offers local, long distance and enhanced telephony and data communications in many states, including California, Ohio, and Texas – three of the largest states in the SBC and Ameritech regions. Thus, ICG Communications has a strong interest

in the proposed merger's impact on the emergence and sustainability of competition in those markets and any others that would be affected by this merger.

ICG applauds the Bureau's effort to negotiate conditions for approval of the SBC/Ameritech merger. Due to this effort, SBC and Ameritech have made proposals in a number of important areas, including some, such as performance standards, that have not been previously addressed at the federal level. As a result, there is an opportunity for the Commission to take important new steps toward achieving the fully competitive local service environment envisioned by the Telecommunications Act of 1996. However, the conditions proposed by SBC and Ameritech do not go nearly far enough in light of the magnitude of the industry consolidation that would result from the proposed merger and the scope and importance of the issues. While SBC touts its proposal as a blueprint "to make in-region local telephone markets of SBC/Ameritech – across 13 states – the most open in the country," the truth is that the proposed conditions largely mirror – and in many instances fall short of – what SBC/Ameritech already has agreed or is required to do in the largest jurisdictions of the region. In light of the inadequacy of the proposed conditions and the unnecessarily slow timetable for implementation, the Commission must require substantial modifications in order to ensure that progress toward fully competitive local markets in the SBC/Ameritech region is advanced rather than retarded.

I. GENERAL CONCERNS AND SUMMARY

A. General Concerns

If the proposed merger is approved, the combined SBC/Ameritech entity will control 40% of the business lines in the country. Such a consolidation dramatically increases the anticompetitive consequences if regulation fails to prevent SBC/Ameritech from abusing its control of bottleneck local exchange facilities in its enlarged region. In the

absence of adequate checks, the merger will enable SBC/Ameritech's market power, which will be extended to cover 40% of the market, to be effectively leveraged for the first time into the emerging markets for local service to national customer accounts. Thus, at a minimum, the merger greatly increases what is at stake in the local service marketplace.

At the same time, the proposed merger presents the Commission with a one-time-only opportunity to remove or reduce many of the remaining barriers to the emergence of competition in the SBC/Ameritech region. Three-and-a-half years of incumbent local exchange carrier ("ILEC") foot-dragging have taken their toll on hopes for early fulfillment of the promises of the Telecommunications Act. Fundamental milestones such as full availability of collocation and uniform OSS access have taken far longer than necessary to achieve. Because SBC and Ameritech obviously view this merger as a critical piece of their own business plans, the merger presents an opportunity that must not be missed for speeding up the timetable of local competition.

However, it is a *one-time-only* opportunity. No matter how many disclaimers are included, the competitive safeguards adopted as conditions for a merger of this magnitude will inevitably become benchmarks for subsequent regulatory decisions, and SBC/Ameritech will do its utmost to convince state and federal regulators that what it is required to do here represents a ceiling on what can be reasonably required in the future proceedings.

In pointing this out, ICG does not mean to deter the Commission from trying to minimize such a perception of SBC/Ameritech merger conditions. To the contrary, the Commission must make crystal clear that the conditions it adopts here are only what has been found appropriate in the context of this particular merger at this particular time. The Commission should expressly state that such conditions will have no preemptive effect on

either state-imposed conditions for approval of the merger or any other state or federal decisions on unbundled network elements ("UNEs"), arbitrations, operations support systems, performance standards and measures, advanced services, and Section 271 applications.

Yet, the Commission must recognize that, no matter what the Commission says in its Order, the conditions ultimately adopted undoubtedly will be cited to state agencies in merger-related proceedings, subsequent arbitrations, and Section 271 proceedings as representing the maximum burden that can reasonably be required of SBC/Ameritech or other ILECs. The standards will also be used in other federal proceedings – on UNE remand, OSS performance standards and measures, advanced services, and especially in Section 271 application proceedings – to make the same argument. The FCC can expect to hear from SBC/Ameritech that, once the merger conditions are "substantially" fulfilled, SBC/Ameritech should be granted 271 approval in each of their 13 states.

Therefore, the Commission must carefully consider the conditions proposed by Ameritech and SBC and the relationship of those conditions to what has been agreed to, required, or shown to be feasible in other state and federal proceedings. With a new round of Section 271 applications looming, now is not the time to "lower the bar." Yet, as discussed below, many of the SBC/Ameritech's proposed conditions would do little more than affirm what is already required by the Act and by FCC and state decisions. Worse, many of the proposed conditions actually do "lower the bar" substantially below the point where it has recently been raised in a number of several states. Rather than letting SBC and Ameritech stand still or even to regress to a minimum level of performance, the FCC should demand a commitment to higher standards that effectively adopt the "best practices" from any state within the merged company's territory.

B. Summary Of ICG's Views On Specific Conditions

Among the most important of the proposed merger conditions are the performance standards. Effective performance standards are critically needed to provide continuing incentives for ILECs to comply with their Section 251 obligations. However, the Commission must evaluate the standards proposed by SBC/Ameritech in light of the great strides recently taken at the state level. Strong performance standards were recently adopted in Texas and have been agreed to by SBC in California. The standards proposed by SBC/Ameritech fall far short of what has been shown to be possible – and acceptable to SBC – in these states. Approving inadequate performance standards would undermine these and other ongoing efforts to ensure performance parity.

Several other key areas – such as OSS access and collocation – are addressed in the proposed conditions. The inclusion of such requirements is necessary to ensure uniform, standardized interfaces for OSS and full implementation of the collocation requirements recently specified in the Advanced Services order. However, the timetables for compliance proposed by SBC/Ameritech would move much too slowly toward achieving milestones that should have passed already. To ensure that these conditions do not become empty promises, the proposed OSS and collocation conditions must require substantial compliance *prior to closing*. In addition, the Commission must set deadlines for early compliance, commensurate with the importance and clear feasibility of what is required. By failing to require sufficient steps prior to and immediately after the closing, the proposed conditions threaten to retard rather than accelerate progress in these areas.

In a major omission, SBC and Ameritech have not addressed enhanced extended links ("EEL") at all. Further, the important subject of EEL has been totally disregarded in SBC/Ameritech's proposed conditions. The provision of this element is especially critical to the promotion of facilities-based competition for the national, multi-location customers

that are likely to be a target of the proposed merger. The Commission must require SBC/Ameritech to offer EEL as a UNE.

Another very important provision of the proposed conditions is the provision for regionwide MFN treatment. This requirement must be strengthened so that it mirrors the existing framework of Section 252(i). There is no legitimate reason why SBC/Ameritech should not make interconnection provisions offered in one state available in other states to precisely the same extent as in the original state.

Finally, the structural separation requirements for SBC-Ameritech's advanced services and out-of-region subsidiaries are potentially useful, but must be strengthened in order to prevent the clear potential for SBC-Ameritech to leverage its market power into the markets for advanced services and national local service accounts.

II. PERFORMANCE STANDARDS

Performance measures and their consequences will be the primary vehicle for regulators and CLECs to monitor and enforce ILECs' Section 251 and 252 obligations. At best, mergers and Section 271 requirements provide the RBOCs with sporadic and ultimately transitory incentives to comply with the Act. To ensure continuous, lasting incentives for ILECs to provide parity to their competitors the Commission must establish effective national performance measures with meaningful penalties for non-performance.

In California and Texas – the two largest jurisdictions to be served by the merged entity – the public service commissions are in the process of implementing wide ranging performance standards that go far beyond what SBC and Ameritech proposed here. Indeed, the performance measures proposed here are a small subset of the performance measures included in what is known as the Texas Plan. The Texas performance standards include some 120 performance measures, while the California standards include 43 performance

measures which disaggregate into approximately 1,000 submeasures. By contrast, the proposed conditions contain only 20 performance measures. The relative inadequacy of the proposed standards compared with the California and Texas plans is illustrated in Attachments 1 and 2. Among their other deficiencies, the proposed standards omit any measures addressing:

- interconnection trunks (where installation delays and outages effectively cut off all of a CLEC's service to the affected area);
- data base accuracy (affecting critical customer services such as 911 and directory assistance);
- loading of new NXX codes (without which CLECs cannot route calls properly);
- responses to bona fide requests (which are often delayed for months); and
- service center responses (one of the most important *human* interfaces between ILEC and CLEC).

In addition, there is only one measure addressing billing, compared with ____ in the Texas plan.

In short, the proposed measures fall far short of *both* the standards adopted by the Texas PUC, on which SBC/Ameritech's proposed standards are ostensibly based, *and* the performance standards that SBC has agreed to in California. Adopting SBC/Ameritech's proposal without major modifications would (1) undermine the completion of the work being done in California and Texas, (2) set a precedent for other states that falls short of what is demonstrably possible, and (3) fail to seize a one-time opportunity to establish effective national standards.

While one could argue that the proposed performance standard conditions represent only the minimum set of performance measures necessary to approve a merger and are *not* the comprehensive set required to fulfill SBC and Ameritech's legal obligations under Sections 251 and 271 of the Act, the reality is that whatever set of performance measures the FCC approves in this proceeding will be championed by SBC and Ameritech as all that is needed. This is clear from their introduction to these proposals where they claim that the merger conditions represent a comprehensive plan to open up their local markets to competition. The FCC's decision on merger conditions will be viewed not only as a review of a merger, but also as a preview of the requirements for 271 approval.

Rather than adopting SBC/Ameritech's "lowest common denominator" approach, the FCC should require SBC/Ameritech, as a condition of the merger, to meet the highest set of performance measures standards developed within the SBC/Ameritech region. The FCC should adopt in their entirety either the Texas performance measures or the performance measures SBC agreed to in California.[1] Either set of performance measures is far more comprehensive than the proposal.

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[1] Significantly, SBC *agreed* to nearly all of the performance measures before the California Public Utilities Commission, including the levels of disaggregation and the auditing requirements. In fact, SBC filed, along with the CLECs and GTEC, a Joint Partial Settlement Agreement ("JPSA") that clearly lays out all of the performance measures, their retail analogs and/or benchmarks, method of calculation, levels of disaggregation, reporting structure (including SBC affiliates), and business rules. While there are a few areas where SBC and the CLECs did not reach agreement, those areas have been preliminarily reviewed and analyzed by an Administrative Law Judge (ALJ) at the CPUC. The ALJ's draft decision adopting the JPSA and settling the areas of disagreement was released on July 1, 1999, and a final decision is likely to be adopted in August 1999. ICG recommends that the FCC consider the draft decision's set of measures and the related issues as the basis for a conditioned approval of the SBC/Ameritech merger.

In addition to including only a fraction of the necessary performance measures, the proposed performance standards do not provide adequate incentives to motivate SBC/Ameritech to meet the performance standards. Consequences – also known as incentives or penalties – are the critical enforcement tool for performance parity. The consequences provided in the proposed merger conditions are too weak, too complex, inappropriately include an absolute cap, and discriminate against smaller CLECs. The FCC should incorporate as merger conditions the incentives proposed by a coalition of CLECs in California.

Because SBC/Ameritech has no market incentive to provide parity to its competitors, the performance standards must provide that incentive. In order to provide parity of performance SBC must incur OSS improvement costs, and may also lose revenues as more end users decide to switch their services to a CLEC once parity is provided. The incentive payment must be large enough to incent SBC/Ameritech to incur those costs and the potential revenue losses. Simply equating an incentive payment to the applicable monthly recurring or non-recurring charge only prevents SBC from receiving payment for a defective service. Such an approach cannot act as an incentive to provide better service, i.e., service that is at parity with what SBC/Ameritech provides to itself. The penalties proposed by the California CLEC coalition are large enough to provide that incentive.

Another key criterion of an effective incentive plan is that SBC/Ameritech should not be indifferent between providing "bad" service and "really bad" service. Under the California CLEC plan, the payments escalate as service deteriorates. By contrast, the absolute cap contained in the proposed merger conditions essentially incents SBC to provide the worst possible performance once its accumulated penalties are equal to the cap.

Beyond the cap there is no incentive. Thus, if SBC is already behaving poorly, it would then have an incentive to perform even worse!

In the event that a penalty cap is adopted, the cap should be high enough to provide some incentive to improve service. The cap proposed by SBC/Ameritech is so low that it provides little incentive for SBC to provide parity.

The California CLEC proposal is also based on flat-rated amounts that do not vary by the number of transactions a CLEC has. This too is important because it treats all CLECs equally. If incentives are paid on a per transaction basis, then the ILEC has far more incentive to correct its service for the larger carriers because more dollars are paid if parity is not provided. By contrast, the ILEC may simply ignore the performance it provides to small CLECs because the financial impact of non-performance on the ILEC is small. A flat-rated approach ensures that incentives will improve performance to small CLECs as well as large CLECs.

Although it may be argued that small CLECs may use a flat-rated approach as a revenue-enhancing proposal, this is highly unlikely. To begin, with the CLEC would be relying on payments made for events over which the CLEC has no control. If the ILEC provides parity, then no payments are made. The performance measurements in the California plan are carefully designed to exclude performance of the CLEC so the CLEC cannot *make* the ILEC fail the performance parity test. If a CLEC were to base a business on the expectation of such payments, it would likely go out of business quickly because the ILEC can make sure it provides parity to the CLEC. A business based on events outside of the owner's control will not be sustainable.

III. OSS AND DSL SERVICE CONDITIONS

Efficient access to OSS is recognized to be one of the most important conditions for effective local service competition. The staff has appropriately made it a priority to secure such access as a condition of approving the proposed merger. However, the deployment time frames proposed by SBC/Ameritech for OSS access – 24-months for deployment of interfaces and 30 months for deployment of software solutions or uniform business rules -- are needlessly long. CLECs have waited 3 ½ years for access to OSS. There is no legitimate reason to require them to wait two more years – especially as the necessary interfaces (e.g., Electronic Data Interchange ("EDI") and Electronic Bonding Interface ("EBI")) have already been standardized and in some instances have actually been deployed in a number of SBC/Ameritech states. Today SBC provides an EDI interface and two GUI-based interfaces in California and Texas. Thus, SBC and Ameritech should have little difficulty providing such interfaces throughout the region.

Therefore, where SBC does not currently offer EDI or a GUI interface, SBC should be given a considerably shortened timeframe to do so. There is no excuse for SBC not to be further along in its deployment of electronic interfaces. In a recent California PUC draft decision on this topic, GTEC claimed it did not have an electronic interface and should therefore be exempt from any performance measurements dependent on such an interface. The ALJ's response in the draft decision was to give GTEC 90 days to implement an electronic interface.[2]

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[2] "GTEC currently has no fully electronic/flow-through ordering processing. Because efficient, rapid order processing is essential to a competitive local telephone market, we find that it is necessary for GTEC to program its systems to incorporate fully electronic processing. GTEC should have fully electronic order processing in operation within 90 days of the date of this order that will allow it at a minimum to meet the 10 (footnote continued on next page)

An alternative to mandating a deployment timeline would be to require SBC/Ameritech to implement the performance standards prior to approval of the merger and to rely on the incentives in the plan to encourage SBC to deploy the necessary interfaces. This approach would relieve the FCC from having to determine how long it should take to deploy an interface and would leave that decision to SBC/Ameritech, subject to the consideration that higher penalties will be incurred by the ILEC if it does not deploy the interface. For this approach to work, however, the incentive amounts must be large enough to effectively incent SBC/Ameritech.

If a milestone-based approach is adopted, the milestones for deployment of uniform interfaces, software solutions and/or uniform business rules must be moved much closer to the closing date. Indeed, the Plan of Record for deployment of uniform interfaces should be filed before the merger closing date rather than five months after the date. Appx. A, ¶ 11(a). Further, CLECs should be entitled to submit their own plans for uniform interfaces, software solutions and uniform business rules for consideration by the Commission in the event that no agreement is reached in Phase 2 of these processes. Id., ¶¶ 11(b), 14(b). If there is arbitration, the cost should not be imposed on CLECs. Further, Telecordia should not be allowed to serve as a subject matter expert for any arbitration. ICG's experience in Texas with Telecordia in such a role has been unsatisfactory, because Telecordia does not appear to be capable of overcoming its historically based bias in favor of the Bell companies.

The 18-month and 24-month time frames for completion of Phase 3 of these processes are far too long. Id., ¶¶ 11(c), 14(c). Since the EDI interfaces have already been

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minute average response time benchmark." Draft Decision of ALJ Walwyn, mailed July 1, 1999, OIR 97-10-016/OII 97-10-017, page 21.

deployed in a number of states and EB interfaces are standardized, the time frame for deployment can be shortened considerably. Moreover, deadlines mean little unless there are effective penalties for failing to meet them. Thus, it is imperative that the relevant performance measures have strong penalties associated (see above) in order to provide an adequate incentive for SBC/Ameritech to deploy OSS interfaces as quickly as they are able.

Regarding enhancement of EDI and Datagate for DSL pre-ordering and ordering, the 14-month timeline for deployment of enhancements is also too long. Id., ¶ 16(c). Moreover, during the interim period when SBC undertakes to provide access to its Complex Product Service Order System ("CPSOS"), it is important for the merger conditions to specify clearly the kinds of loop pre-qualification information to which SBC/Ameritech must provide access. Id., ¶ 16(a). Loop make-up information should include wire center information, taper code, equivalent 26 gauge, bridge taps, load coils, repeaters, DAMLs (Digital Add Main Line) and digital loop carriers. These kinds of information are present in the data bases (such as the Loop Facility and Assignment Control System ("LFACS")) that underlie the CPSOS and similar systems, but much of the underlying data bases are masked from viewing by CLECs. There should not be any reason why the information specified above cannot be unmasked immediately throughout the SBC/Ameritech region.

CLECs also need to know exact loop lengths, as opposed to the rather arbitrary loop length groupings described in the proposed conditions. Id., ¶ 23.

Closely related to the issue of access to loop prequalification information is the question of the prices charged of loop modification. The "interim" rates proposed in Attachment C of the plan appear grossly excessive and shall be subsequently reduced or eliminated.

IV. COLLOCATION

The collocation compliance described in the proposed conditions is already required by FCC orders. Compliance with FCC that order should be a condition *precedent* to closing the merger. Allowing the merger to take place based on a promise of *subsequent* compliance invites further foot-dragging by SBC/Ameritech.

At a minimum, the audit of collocation compliance should begin prior to the closing date. Under the current proposal, preliminary audit requirements defining the scope of the audit and the extent of compliance and substantive testing are not even submitted until two months after closing, and no Commission approval of those requirements or subsequent changes to them is required. App. A, ¶ 6. This is unacceptable. The audit requirements must be submitted to and approved by the Commission prior to closing. Any subsequent changes should not be allowed unless approved by the Commission.

Beyond this, the audit should be sufficiently underway to confirm compliance with the collocation requirements prior to closing. In addition, the audit should continue for a longer period (e.g., 24 months) after the closing date, in order to ensure continuing compliance.

The proposed conditions also require that the audit requirements be afforded confidential treatment. This is inappropriate. CLECs have a legitimate interest in verifying that the audit will be conducted in a manner calculated to effectively confirm whether SBC/Ameritech is in compliance with the collocation requirements.

Further, the Commission should ensure that there are effective penalties for failure in the event that the audit determines that SBC has failed to comply with the collocation requirements. Such penalties should be specified in the proposals. If not, the Commission should at least make clear in its order addressing the SBC/Ameritech merger that it intends to vigorously prosecute any violations of its collocation order.

V. EEL

A key ingredient in the success of facilities-based competition is the availability of enhanced extended links ("EEL"). EELs are of great importance to the development of facilities-based competition, because they enable facilities-based CLECs to expand the geographic scope of their facilities without having to undertake the expense and delay of collocating in every single ILEC central office. For the same reason, EELs are especially important in enabling CLECs to provide transparent, facilities-based service to multi-location customers. Therefore, a requirement to provide EELs is particularly appropriate, given that a major effect of the proposed merger will be to increase the leverage that SBC/Ameritech can exercise in competing for national, multi-location customers.

The provision of EELs is both feasible and warranted by state precedent. EELs have been required to be offered in New York and Texas. There is no legitimate reason why they should not be made available throughout the SBC/Ameritech region.

VI. MFN PROVISIONS

One of the most important of the proposed merger conditions is the region-wide MFN requirement. Appx. A., ¶ 52. Given the enormous economies of scale that SBC/Ameritech will acquire, and the corresponding expansion of their ability to exercise market power, it is entirely reasonable for the Commission to demand that SBC/Ameritech accord CLECs some modest corresponding economies of scale in their ability to obtain MFN treatment of provisions in existing interconnection agreements. In its current form, however, the MFN condition is seriously flawed.

First, the regionwide MFN requirement applies only to underlying agreements that are approved after the closing date, and do not appear to apply to Ameritech agreements at all. The requirement should apply to all underlying agreements whether of SBC,

Ameritech or SBC/Ameritech, and should apply to agreements approved before the closing date as well as to agreements entered after the closing date. Because SBC/Ameritech is likely to become more resistant to negotiating reasonable interconnection agreements after it has secured merger approval, it is particularly important that SBC/Ameritech be held to conditions to which it was willing to agree prior to closing. There is no legitimate reason to limit the application of the regionwide MFN condition to provisions of post-merger agreements.

Second, the MFN requirement must not be diluted by making it less granular than the current Section 252(i) requirement. The proposed conditions would add a qualifier that the requesting carrier must accept "all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement." Appx. A., ¶ 52. This proviso opens the door to endless additional litigation over what the "corresponding compromises" might have been in the underlying agreement. The regionwide MFN requirement of the merger conditions should apply with the same granularity as the existing Section 252(i) requirement.

Third, the MFN requirement should apply to arbitrated as well as voluntary agreements. Application to arbitrated agreements is a fundamental aspect of Section 252(i). Failing to apply the regionwide MFN requirement to arbitrated agreements would result in the MFN requirement applying only to the relatively unimportant provisions that SBC does not contest. Further, such a limitation would create a perverse incentive for SBC to litigate every Section 252(i) issue in order to avoid voluntarily agreeing to the provision in a second agreement within the same state (under existing Section 252(i)) that would

then become the basis under the proposed conditions for applying the provision to a third agreement outside the state.

Finally, the MFN requirement should not be conditioned on being "consistent with the laws and regulatory requirements of the state for which the request is made." The agreement must be approved by the state commission in any event, and the state commission is competent to judge for itself the consistency of the agreement with its laws and regulations. SBC should not be allowed to obstruct negotiations by raising spurious claims of inconsistency with state law.

VII. STRUCTURAL SEPARATION

The structural separation requirements proposed by the Commission are insufficient to prevent SBC from exercising a dangerous degree of market power. In general, the requirements applicable to SBC/Ameritech's advanced services subsidiary appear to be significantly weaker than those applicable to a RBOC long distance subsidiary under the Commission's Section 272 rules. This is inappropriate for at least two reasons. First, unlike the separation requirements of the Section 272 rules, which will apply to SBC/Ameritech's in-region operations only after a finding under Section 271 that SBC/Ameritech has adequately opened its local service market to competition, the separation requirements in the proposed conditions will apply to in-region advanced services upon closing – *prior* to any finding that SBC/Ameritech has adequately opened its local service market to competition. By definition, therefore, the danger of SBC/Ameritech improperly leveraging its market power within its region to the benefit of its competitive subsidiary is greater with respect to the advanced services subsidiary that would be established *now* then with respect to the long distance subsidiary that will be established only *after* the prerequisites for Section 271 approval have been satisfied.

Second, SBC/Ameritech's advanced services are currently subject to the protection of Section 251, and would be removed from that protection when placed in the subsidiary established by the proposed conditions. In order to adequately replace the existing Section 251 protections, the separate subsidiary must be substantially stronger than the Section 272 requirements, which apply to services not subject to Section 251 obligations.

Of critical importance in this regard is the issue of joint marketing. The potential for discrimination and subsidy is especially great if joint marketing is allowed, because SBC/Ameritech has not agreed to offer nondiscriminatory marketing opportunities to other CLECs. In order to avoid conferring an improper competitive advantage on SBC's advanced services subsidiary, SBC/Ameritech should not be permitted to conduct *any* joint marketing with its advanced services subsidiary.

Joint marketing is also a critical concern with respect to the entity through which SBC/Ameritech will provide out-of-region local services. One effect of the proposed merger is to increase SBC/Ameritech's ability to compete for national customer accounts. However, as long as SBC and Ameritech control local service monopolies, their competition for national customer accounts also raises the danger of *anti*competitive behavior in the national customer market. Through the proposed merger, SBC and Ameritech will increase their ILEC "footprint" to cover 40% of the business lines in the country. As a result, it will become increasingly probable that SBC/Ameritech can leverage its market power to gain unwarranted advantages in the national market.

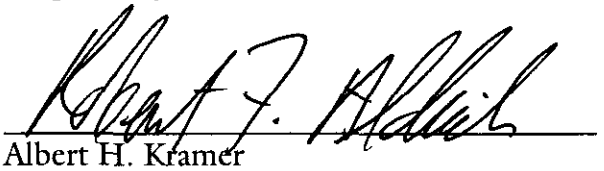
This is a particular danger if SBC/Ameritech's out-of-region "CLEC" subsidiary is allowed to joint market with its in-region ILECs. Such joint marketing by definition involves discrimination by the ILEC between the out-of-region subsidiary and other CLECs who would benefit from the ability to conduct joint marketing with

SBC/Ameritech's ILEC to gain national customer accounts. Further, such joint marketing presents an unpreventable opportunity for SBC/Ameritech to use ILEC revenue to subsidize its out-of-region CLEC's marketing efforts.

In order to prevent such anticompetitive effects, the Commission should not allow any joint marketing between SBC/Ameritech's ILECs and its out-of-region subsidiary. All services provided to national customer accounts should be provided by the out-of-region subsidiary, including services offered within the SBC/Ameritech region. Such services should be provided in the same manner as any other facilities-based CLEC – by securing UNEs from SBC/Ameritech at cost-based rates.

Dated: July 19, 1999

Respectfully submitted,



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Attachment 1

Comparison of Performance Measures Agreed to in California With Performance Measures in SBC/Ameritech's Proposal Merger Conditions

Comparison of Performance Measures Agreed to in California With Performance Measures in SBC/Ameritech's Proposal Merger Conditions

California Performance Measures **Bold** indicates that incentives apply to the performance submeasure	FCC Merger Measures
Pre-Ordering	
Avg Response Time (to Pre-Order queries)	Measure 15
Ordering	
Avg FOC Notice Interval	Similar to Measure 1 – Percent FOC Received Within "X" Hours
Avg Reject Notice Interval	**********
Percent of Flow Through Orders	Measure 16
Provisioning	
Percent of Orders Jeopardized	**********
Avg Jeopardy Notice Interval	**********
Avg Completed Interval	Measures 4a – 4c and Measure 6
Percent Completed Within Standard Interval	**********
Coordinated Customer Conversion	Measure 13
Percent Number Portability Network Provisioning	**********
Percent of Due Dates Missed	Measures 2a – 2c
Percent of Due Dates Missed Due to Lack of Facilities	**********
Delay Order Interval to Completion Date	**********
Held Order Interval	Measure 5a – 5c
Provisioning Trouble Reports	**********
Percent Troubles in 30 days for new orders	Similar to Measures 3a – 3c
Avg Completion Notice Interval	**********

California Performance Measures	FCC Merger Measures
Maintenance	
Customer Trouble Report Rate	Measures 11a – 11c and Measure 12
Percent of Customer Trouble Not Resolved within Est Time	Measures 8a and 8b, no measure for design circuits
Avg Time to Restore	Measure 10a – 10c
POTS Out of service less than 24 hours	Measure 10a
Frequency of Repeat troubles in 30-day period	Measures 9a – 9c
Network Performance	
Percent Blocking on Common Trunks	Measure 18
Percent Blocking on Interconnection Trunks	Measure 17
NXX Loaded by LERG Effective Date	**********
Network Outage Notification	**********
Billing	
Usage Timeliness	**********
Accuracy of Usage Feed	**********
Wholesale Bill Timeliness	Measure 20
Usage Completeness	**********
Recurring Charge Completeness	**********
Non-Recurring Charge Completeness	**********
Bill Accuracy	**********
Duplicate Billing	**********
Accuracy of Mechanized Bill Feed	**********
Database Update Measurements	
Avg Database Update Interval	**********
Percent Database Accuracy	**********
Emergency 911 Management System Database Update Interval	**********

California Performance Measures	FCC Merger Measures
Collocation	
Avg Time to Respond to a Collocation Arrangement	**********
Avg Time to Provide a Collocation Arrangement	Similar to Measure 41
Interface Measurements	
Percent of Time Interface is Available	Measure 14
Avg Notification of Interface Outages	**********
Center Responsiveness	**********